

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ANTHONY PRATT,

Petitioner,

v.

Case No. 04-CV-1119

UNITED STATES OF AMERICA,

Respondent.

ORDER

On November 17, 2004, Anthony Pratt filed a petition pursuant to 28 U.S.C. § 2255 to vacate, set-aside, or correct the sentence he is currently serving. On January 13, 2006, this court dismissed Pratt's petition for want of jurisdiction. Thereafter, Pratt filed a notice of appeal, which this court construes as a request for a certificate of appealability (COA). For the reasons set forth below, his request will be denied.

Pursuant to 28 U.S.C. 2253(c), an appeal from a judgment of a 28 U.S.C. § 2255 petition may not be taken absent a circuit justice or judge issuing a COA. A COA should be issued only if there is a substantial showing of a denial of a constitutional right. The Supreme Court has further articulated that in order to satisfy the standard of "substantial showing," a petitioner must be able to show that "jurists of reason would find it debatable whether the petition states a valid claim of denial of a constitutional right." *Slack v. McDaniel*, 529 U.S. 473,478 (2000).

Pratt's section 2255 petition was dismissed for want of jurisdiction as it was his second petition pursuant to 28 U.S.C. § 2255. Rule 9 of the Federal Rules Governing Section 2255 provides that a petitioner presenting a second or successive motion "must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion." Pratt did not comply with this requirement, and absent approval from the Seventh Circuit to consider the motion, the court was constrained to deny his motion for want of jurisdiction. See *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1990) (stating "[a] district court must dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing") (emphasis in original). Therefore, Pratt has failed to demonstrate to the court any showing of a substantial denial of a constitutional right.

Accordingly,

IT IS ORDERED that Pratt's request for a certificate of appealability be and the same is hereby **DENIED**.

Dated at Milwaukee, Wisconsin, this 30th day of March, 2006.

BY THE COURT:

s/J.P. Stadtmueller
J.P. STADTMUELLER
U.S. District Judge